



Signed and Filed: March 22, 2022

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Bankruptcy Case
	)	No. 21-30592-DM
PSG MORTGAGE LENDING CORP.,	)	
A DELAWARE CORPORATION,	)	Chapter 11
	)	
Debtor.	)	
	)	
	)	
LUKE BRUGNARA,	)	Adversary Case No. 21-03065-DM
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PAUL GREENFIELD, CHL, DAKOTA	)	
LP, DEVITO, GALINDO DONATI,	)	
FUSCO, PSG CAPITAL,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM DECISION ON MOTION TO REMAND AND  
MOTION FOR SUMMARY JUDGMENT

I. Background Facts

The real property located at 224 Sea Cliff Avenue in San Francisco (the "Sea Cliff Property") that lies at the heart of

1 this adversary proceeding and underlying bankruptcy has also  
2 been at the heart of multiple prior bankruptcies and adversary  
3 proceedings. This history cannot be ignored as the court  
4 considers movant Luke Brugnara's Motion to Remand ("Remand  
5 Motion") (Dkt. 15) the adversary proceeding back to state court  
6 and Defendant Paul Greenfield's Motion for Summary Judgment  
7 ("MSJ") (Dkt. 8), joined by non-party and Debtor PSG Mortgage  
8 Lending Corp. (Dkt. 22) and Defendant Dakota Note, LLC (misnamed  
9 as Dakota LP (Dkt. 36)).

10 On May 22, 2017, Debtor Brugnara Properties IV ("BPVI")  
11 filed its most recent chapter 11 bankruptcy, Case No. 17-30501-  
12 DM. At the time of the BPVI bankruptcy, Kay Brugnara served as  
13 the president of BPVI and her husband Luke Brugnara<sup>1</sup>, the  
14 previous president of BPVI, was incarcerated but still somewhat  
15 active in the case. The case was eventually converted to a  
16 chapter 7 liquidation. BPVI's main asset was the Sea Cliff  
17 Property. Multiple adversary proceedings were commenced during  
18 the bankruptcy, including *Brugnara Properties VI v. PSG Capital*  
19 *Partners, Philip Fusco, and John DeVito*, AP No. 17-03048-DM (the  
20 "PSG AP"); *Brugnara Properties VI v. Dakota Note, LLC, Arick D*  
21 *Amspacker, Paul Greenfield, and California Home Loans* AP No. 17-  
22 03049-DM (the "Dakota Note AP"); and *Brugnara Properties VI v.*  
23 *Internal Revenue Service and California Franchise Tax Board*, AP  
24 No. 17-03071-DM (the "Tax AP").

---

25  
26  
27 <sup>1</sup> The Court hereinafter references Luke Brugnara and Kay  
28 Brugnara by first name to differentiate between the parties. No  
disrespect is intended.

1       The Tax AP culminated in a Judgment (Tax AP Dkt. 101) that  
2 found that BPVI is the nominee of both Luke and Kay, and BPVI is  
3 liable for the tax liabilities of the two Brugnaras that were  
4 recorded against the Sea Cliff Property. The court further  
5 found that BPVI is the alter ego of both Luke and Kay and thus  
6 liable for their individual state and federal tax liabilities.

7       The PSG AP culminated in an Order Authorizing Compromise of  
8 Controversy (BPVI bankruptcy Dkt. 329) between the chapter 7  
9 Trustee, who had at that point stepped into the shoes of BPVI as  
10 the Plaintiff, and the Defendants. The underlying Motion to  
11 Compromise Controversy ("Compromise") (BPVI Dkt. 297) was  
12 heavily contested by BPVI and Kay. As the Compromise  
13 summarizes, BPVI asserted a claim of breach of contract against  
14 PSG Capital Partners, Inc. (PSG Capital), which held a secured  
15 lien against the Sea Cliff Property, for allegedly failing to  
16 fully fund a loan, and asserted a claim of intentional  
17 misrepresentation against all Defendants for essentially  
18 tricking BPVI into taking a loan secured by the Sea Cliff  
19 Property that was more expensive than intended. The Trustee did  
20 not believe there was a probability of success in prosecuting  
21 the lawsuit for a variety of reasons, and thus found it prudent  
22 to accept a \$20,000 payment from the Defendants in exchange for  
23 dismissing the adversary proceeding with prejudice.

24       The Dakota Note AP culminated in an Order Authorizing  
25 Compromise of Controversy (BPVI Dkt. 283) between the chapter 7  
26 Trustee, who had at that point stepped in the shoes of BPVI as  
27 the Plaintiff, and the Defendants. This Compromise was not  
28 opposed by any party. As the Trustee summarized, the underlying

1 Dakota Note AP consisted of claims of breach of contract,  
2 intentional misrepresentation, unfair business practices, and  
3 loss of business opportunity against the Defendants all of whom  
4 were creditors (or principals of creditors) with security  
5 interests against the Sea Cliff Property. Each claim relates to  
6 a loan made by Defendant Dakota Note LLC to BPVI that was  
7 secured by the Sea Cliff Property. The Trustee did not believe  
8 there was any probability of success in prosecuting the lawsuit  
9 and accepted a \$25,000 payment and \$25,000 advance from the  
10 Defendants in exchange for dismissing the case with prejudice.

11       Upon the resolution of these adversary proceedings the  
12 automatic stay in the BPVI case was lifted for these former  
13 Defendants and still-secured creditors to foreclose on the Sea  
14 Cliff Property. At various points in the BPVI bankruptcy and  
15 the adversary proceedings, Kay took alternating positions on  
16 whether she or Luke personally had any ownership interest in the  
17 Sea Cliff Property. The IRS also at one point took a position  
18 that Luke held an "equitable ownership" interest in the Sea  
19 Cliff Property by virtue of the nominee liens discussed above  
20 (BPVI Dkt. 410). The concept was a novel one created by the  
21 IRS, and the court declined to endorse the concept (BPVI Dkt.  
22 439).

23       The BPVI bankruptcy is still open and pending in this  
24 court.

25       On August 13, 2020, PSG Capital foreclosed on the Sea Cliff  
26 Property, and shortly thereafter transferred title to PSG  
27 Mortgage Lending Corp. ("Debtor"), the Debtor in this underlying  
28 bankruptcy. On September 29, 2020, Luke commenced a lawsuit

1 against "Paul Greenfield, CHL, Dakota LP, PSG Capital, Fusco,  
2 DeVito, Galindo Donati" in San Francisco Superior Court  
3 ("Complaint"). The Complaint alleges (1) fraud; (2) unfair  
4 business practices; (3) unconscionable loans and (4) usury as to  
5 loans made to "[Luke's] family" and secured by the Sea Cliff  
6 Property. The Complaint also claims Luke is the "equitable  
7 title owner" of the Sea Cliff Property and "President and sole  
8 officer of Brugnara Properties VI." The Complaint also seeks  
9 quiet title to the Sea Cliff Property in Luke's name.

10 On August 15, 2021, Debtor commenced this bankruptcy. A  
11 new automatic stay went into effect and controls in this case  
12 notwithstanding the termination of the automatic stay in the  
13 BPVI case. On December 3, 2021, Debtor removed Luke's Complaint  
14 to this court. Luke filed the Remand Motion seeking to return  
15 his lawsuit to the state court, claiming that the lawsuit  
16 concerns solely state matters unrelated to the Debtor.

17 Prior to Luke filing the Remand Motion, Defendant Paul  
18 Greenfield filed a Motion for Summary Judgment ("MSJ"), seeking  
19 summary judgment in his favor as to the entirety of the  
20 Complaint based on res judicata, as all issues detailed in the  
21 Complaint were previously adjudicated by settlement agreements  
22 in the BPVI bankruptcy. Defendant Dakota Note, LLC and Debtor,  
23 who is notably not a defendant, joined the MSJ.

24 At a hearing on the two motions held on February 25, 2022,  
25 Luke mentioned an amended complaint that cured any defects of  
26 pleading. No amended complaint has been filed with this court  
27 or the San Francisco Superior Court. At that hearing and in  
28 other pleadings Luke also re-characterized his Complaint and

1 alluded to other causes of action not listed in the Complaint,  
2 such as "theft of credit." This court shall only examine and  
3 rule on the causes of action listed in the Complaint currently  
4 before it, and no other hypothetical amended complaint or cause  
5 of action will be considered.

6 **II. Remand**

7 Bankruptcy courts have broad discretion to remand cases  
8 over which they otherwise have jurisdiction on any equitable  
9 ground. 28 U.S.C. § 1452(b). In the Ninth Circuit, questions of  
10 remand are more accurately considered under a discretionary  
11 abstention analysis. See *In re Tucson Estates, Inc.*, 912 F.2d  
12 1162, 1166-68 (9th Cir. 1990). In *Tucson*, the Ninth Circuit laid  
13 out twelve factors a bankruptcy court should consider in  
14 deciding whether to exercise discretionary abstention (and thus  
15 remand) under 28 U.S.C. § 1334(c)(1):

- 16 (1) the effect or lack thereof on the efficient  
17 administration of the estate if the court abstains or  
18 remands the AP,
- 19 (2) the extent to which state law issues predominate  
20 over bankruptcy issues,
- 21 (3) the difficulty or unsettled nature of the  
22 applicable law,
- 23 (4) the presence of a related proceeding commenced in  
24 state court or other nonbankruptcy court,
- 25 (5) the jurisdictional basis, if any, other than 28  
26 U.S.C. § 1334,
- 27 (6) the degree of relatedness or remoteness of the  
28 proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted  
'core' proceeding,
- (8) the feasibility of severing state law claims from  
core bankruptcy matters to allow judgments to be  
entered in state court with enforcement left to the  
bankruptcy court,
- (9) the burden of [the bankruptcy court's] docket,

1 (10) the likelihood that the commencement of the  
2 proceeding in bankruptcy court involves forum shopping  
3 by one of the parties,  
4 (11) the existence of a right to a jury trial, and  
5 (12) the presence in the proceeding of nondebtor  
6 parties.

7 *Id.* at 1167. As to all claims excluding claims to quiet  
8 title, the factors weigh against abstention.

9 Bankruptcy courts have sole jurisdiction to determine  
10 manners concerning property of the bankruptcy estate.  
11 11 U.S.C. § 541. See, also, 28 U.S.C. § 1334(a). The Sea Cliff  
12 Property is undoubtedly property of the bankruptcy estate.  
13 Debtor currently holds title to the Sea Cliff Property. Any  
14 determination that title should be quieted to Luke, must be made  
15 by this court.

16 As to the remainder of the Complaint, each cause of action,  
17 and each Defendant, has been adjudicated by this court in the  
18 BPVI bankruptcy and the adversary proceedings discussed above.  
19 Though Luke now positions himself as the plaintiff and equitable  
20 owner of the Sea Cliff Property in the Complaint, the loans  
21 described in the Complaint are those that were made to BPVI and  
22 the court previously determined unequivocally in the BPVI  
23 bankruptcy that no equitable ownership of the Sea Cliff Property  
24 existed. Abstention would create inefficiencies in the  
25 administration of this current underlying bankruptcy, the still-  
26 pending BPVI bankruptcy, and the state court. The law  
27 applicable to the Complaint is well settled. The Complaint is  
28 deeply interrelated with both the underlying bankruptcy and the  
BPVI bankruptcy. It is not feasible or sensible for this court  
to parse the Complaint and send some pieces back to a state

1 court, which would then only be forced to interpret this court's  
2 prior orders. Most importantly, the filing of the Complaint by  
3 Luke, and not the removal by the Debtor, appears to be a case of  
4 forum shopping—another bite at an apple for a litigant who was  
5 unhappy with the outcomes of the adversary proceedings in the  
6 BPVI bankruptcy. This is not acceptable.

7 As almost every factor weighs against abstention, the court  
8 shall exercise its discretion by retaining the matter for  
9 resolution and DENY the Remand Motion.

### 10 **III. Summary Judgment**

11 On a motion for summary judgment, the court must determine  
12 whether, viewing the evidence in the light most favorable to the  
13 nonmoving party, there are any genuine issues of material fact  
14 as to any claim, part of claim, defense, or part of defense.

15 *Simo v. Union of Needletrades, Indus. & Textile Employees*, 322  
16 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56. Summary  
17 judgment against a party is appropriate when the pleadings,  
18 depositions, answers to interrogatories, and admissions on file,  
19 together with the affidavits, if any, show that there is no  
20 genuine issue as to any material fact and that the moving party  
21 is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

22 Under the doctrine of res judicata, claims that were raised  
23 or could have been raised in a prior proceeding may not be  
24 raised in a subsequent proceeding. *Owens v. Kaiser Found. Health*  
25 *Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). The application  
26 of res judicata requires (1) an identity of claims, (2) a final  
27 judgment on the merits, and (3) identity or privity between the  
28



1 parties." *Id.* (quoting *Western Radio Serv. Co. v. Glickman*, 123  
2 F.3d 1189, 1192 (9th Cir. 1997)).

3 Here, each claim in Luke's Complaint, though (possibly  
4 intentionally) poorly articulated, is identical to the claims  
5 brought by BPVI in the PSG AP and the Dakota Note AP. The  
6 Dakota Note AP alleged breach of contract, intentional  
7 misrepresentation, and unfair business practices related to  
8 alleged intentional failure to fully fund a loan, resulting in  
9 BPVI being forced into taking a loan from PSG Capital at an  
10 incredibly high interest rate. The Dakota Note AP likewise  
11 alleged that these acts were the result of a scheme to force  
12 BPVI into foreclosure. (Dakota Note AP Dkt. 9) The Complaint's  
13 counts of fraud, intentional misrepresentation, and unfair  
14 business practices likewise relate to a scheme by the Dakota  
15 Note AP Defendants to enter into a loan that Defendants failed  
16 to fund, which forced "Luke's family" (as opposed to BPVI) into  
17 a loan with PSG Capital at an incredibly high interest rate, all  
18 with the intent to force a foreclosure.

19 The PSG AP alleged breach of contract and intentional  
20 misrepresentation related to alleged trickery which forced BPVI  
21 into a loan which was illegal due to its very high interest  
22 rate, which was much more expensive than anticipated. (PSG AP  
23 Dkt. 1). The Complaint's counts of unconscionable loans and  
24 usury are directly related to the alleged scheme to force Luke  
25 (as opposed to BPVI) into a loan which was illegal due to its  
26 very high interest rate, which was much more expensive than  
27 anticipated. In this instance, the claim of intentional  
28

1 misrepresentation in the PSG AP, and the claim of usury in the  
2 Complaint, are identical and would have sought identical relief.

3 The stipulated dismissal with prejudice as to each  
4 adversary proceeding constitutes a final judgment on the merits  
5 for res judicata purposes, especially when the same court  
6 adjudicates both the previous and current claims. *Headwaters*  
7 *Inc. v. U.S. Forest Service*, 399 F.3d 1047 (9th Cir. 2005).

8 Finally, there is privity between the parties to the  
9 Complaint and the parties to the prior adversary proceedings.  
10 Privity is a flexible concept in which a party is "so identified  
11 in interest with a party to former litigation that he represents  
12 precisely the same right in respect to the subject matter  
13 involved." *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997)  
14 (citations omitted). Luke claims an equitable ownership interest  
15 to the Sea Cliff Property, to which legal ownership interest was  
16 previously held by BPVI. This court declined to extend the  
17 novel concept of "equitable ownership interest" initially raised  
18 by the IRS in the BPVI bankruptcy to say that the Sea Cliff  
19 Property was not property of the estate. Luke apparently has  
20 seen fit to use the IRS-created concept to create new standing  
21 for himself in the state court. For now, however, as the alter  
22 ego to BPVI, a former president of BPVI, and apparently a  
23 current president of BPVI, there is sufficient identity of  
24 interest between Luke and BPVI to bind Luke to the prior  
25 dismissals.

26 There is also identity between the Defendants in the prior  
27 adversary proceedings and the Defendants named in the Complaint.  
28 It is apparent to the court that the parties "DeVito," "Fusco,"

1 and "PSG Capital" named in the Complaint are John DeVito, Philip  
2 Fusco, and PSG Capital Partners, Defendants in the PSG AP. It  
3 is also apparent that the parties "Dakota LP," "Paul  
4 Greenfield," and "CHL" named in the complaint are Dakota Note,  
5 LLC, Paul Greenfield, and California Home Loans, Defendants in  
6 the Dakota Note AP. While "Galindo Donati" has no corresponding  
7 party in either previous AP, it does not appear that he was ever  
8 served with the Complaint.

9 **IV. Conclusion**

10 For the reasons set forth above, the Remand Motion is  
11 DENIED. The MSJ is GRANTED in favor of Defendants Paul  
12 Greenfield, Dakota Note, LLC, John DeVito, Philip Fusco, PSG  
13 Capital Partners, and California Home Loans. To the extent the  
14 Complaint was not served on a Defendant who is not entitled to  
15 summary judgment, the Complaint is DISMISSED. Orders reflecting  
16 the court's judgments will be filed concurrently with this  
17 Memorandum Decision.

18 \*\*\* END OF MEMORANDUM DECISION \*\*\*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COURT SERVICE LIST

Luke Brugnara  
c/o Law Offices of Robert Kane  
870 Market Street, Suite #1128  
San Francisco, CA 94102

Paul Greenfield  
2597 Flagstone Dr.  
San Jose, CA 95132